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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 588
DATE ACTIVATED: January 28, 2016

EXPIRATION OF SOL¹

Freedom Fund

Earliest: April 13, 2016

Latest: June 28, 2018

Thomas O'Gara

Earliest: April 13, 2016

Latest: April 12, 2018

ELECTION CYCLE: 2010, 2012

SOURCE:

Sua Sponte Submission

RESPONDENTS:

Freedom Fund and Lance Kolbet in his
official capacity as treasurer
Thomas O'Gara

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(8)(A)
52 U.S.C. § 30102(c)
52 U.S.C. § 30104(a), (b)
52 U.S.C. § 30109(a)(5)
52 U.S.C. § 30116(a)(1)(A), (C)
52 U.S.C. § 30116(f)
11 C.F.R. § 100.52(d)(1)
11 C.F.R. § 100.77
11 C.F.R. § 110.1(b)
11 C.F.R. § 111.24

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

¹ The five-year statute of limitations period had already run for some violations at the time of the *sua sponte* submission. The calculation of the statute of limitations, therefore, is only with respect to those viable at the time of the submission. The dates listed here incorporate all relevant tolling agreements. Freedom Fund have each signed three tolling agreements that add 240 days to the expiration of the statute of limitations. See Freedom Fund Tolling Agreements, Oct. 19, 2015, Dec. 16, 2015, Feb. 2, 2016. After joining the *sua sponte* submission, Thomas O'Gara signed two tolling agreement that add 240 days to the expiration of the statute of limitations. See O'Gara Tolling Agreements, Dec. 30, 2015, Feb. 2, 2016.

I. INTRODUCTION

Freedom Fund and Lance Kolbet in his official capacity as treasurer ("Freedom Fund"), filed a *sua sponte* submission on October 6, 2015, disclosing the receipt of unreported in-kind contributions in the form of unreimbursed event expense payments.² Those payments were made by Thomas O'Gara, who as far back as 1998 has hosted an event known as the "Hook & Bullet" at his home in Idaho; in recent years, that event has served at least partly as a political fundraiser for the Campaign or Freedom Fund. O'Gara subsequently joined the *sua sponte* submission.

According to the Submission, O'Gara made unreimbursed expense payments for the 2010, 2011, and 2012 Hook & Bullet events. Attendees in each of those three years consisted of both O'Gara's personal guests and those attending the event purely as a political fundraiser. The event included various outdoor activities and entertainment for guests, the cost of which was almost entirely paid by O'Gara instead of the benefiting committee. The committees claim that because they did not receive invoices from O'Gara for his expenses, they failed to timely reimburse him or properly disclose his payments as in-kind contributions on their disclosure reports filed with the Commission.³ The committees aver that they discovered these in-kind contributions in 2012 after adopting more thorough record-keeping and oversight practices,

² Mike Crapo for U.S. Senate is the authorized campaign committee of U.S. Senator Michael Crapo (Idaho), and Freedom Fund is his leadership political action committee. See *Sua Sponte* Submission (Oct. 6, 2015) ("Submission") and Letter from Stephen Ryan, McDermott Will & Emery, Counsel for Respondents (Dec. 14, 2015) ("Supplemental Letter").

³ The Respondents included, as attachments to their submission, those invoices that they were able to retrieve; for event expenses where invoices or other proof of payment could not be obtained, the Respondents used expense figures from previous years to estimate the expense payments and reimburse O'Gara.

1 partly as a result of a prior, unrelated *sua sponte* matter before the Commission.⁴ They sought to
2 remedy the situation by reviewing the event expenses, reimbursing O'Gara for all of his expense
3 payments from the 2010, 2011, and 2012 Hook & Bullet events, and purportedly amending the
4 appropriate disclosure reports. They also claim to have implemented safeguards to prevent
5 similar future violations.

6 The available information demonstrates that O'Gara made, and the Campaign and
7 Freedom Fund knowingly accepted, excessive and unreported in-kind contributions. Moreover,
8 after discovering the in-kind contributions, Respondents waited nearly three years to bring the
9 matter to the Commission's attention — even as they worked to resolve another, unrelated *sua*
10 *sponte* matter — and thereby allowed the five-year limitations period for the Commission to seek
11 civil monetary penalties for earlier potential violations to expire. Accordingly, we recommend
12 that the Commission open a matter under review ("MUR"), find reason to believe as to each of
13 the Respondents, and approve the attached Factual and Legal Analyses. Because the record is
14 substantially complete and the Respondents seek to resolve this matter, we also recommend that
15 the Commission enter immediately into pre-probable cause conciliation and approve the attached
16 proposed Conciliation Agreements.

17 II. FACTUAL AND LEGAL ANALYSIS

18 A. Facts

19 1. O'Gara's Unreimbursed Payments for Fundraising Event Expenses

20 Beginning in 1998, O'Gara hosted an annual event, later called the Hook & Bullet, every
21 summer at his home in Idaho.⁵ The event was originally an informal barbecue for O'Gara's

⁴ See Pre-MUR 556 / ADR 725 (Mike Crapo for U.S. Senate, *et al.*).

⁵ See Supp. Letter at 4.

1 family and friends, including Senator Crapo. The attendees in the event's early years made no
2 contributions to Crapo's committees, and attended as O'Gara's personal guests. O'Gara
3 apparently paid all expenses related to the event when it was a purely social gathering.⁶ From its
4 inception, the event featured food and drink, and as it grew in size and scope, it featured a variety
5 of outdoor activities and other entertainment, including fishing, trap and skeet shooting,
6 horseback riding, and a live local band.⁷

7 At some point in the early 2000s, the Hook & Bullet became a fundraising event for
8 political committees linked to Crapo.⁸ The Respondents characterize the Hook & Bullet as
9 "somewhat of a hybrid" community gathering and fundraising event, in that the attendees were a
10 mixture of O'Gara's personal guests and political supporters of Crapo and the Crapo-linked
11 committees.⁹ While Crapo's political committees were not originally involved in planning or
12 paying for the event, the committees became involved as the event became a fundraiser. The
13 2010 Hook & Bullet event benefited the Campaign, while the 2011 and 2012 events benefited
14 Freedom Fund.¹⁰ In each of those three years, the respective committee paid for the shooting
15 expenses, but O'Gara paid for all other expenses, including the party rentals, band, horse rentals,
16 and catering costs.¹¹ Through poor oversight, and because the committees apparently did not
17 receive timely invoices documenting O'Gara's payments, they failed to reimburse O'Gara for
18 these event expenses. They also never reported these payments as in-kind contributions by

⁶ *Id.*

⁷ *Id.* at 5; *see* Submission at 1.

⁸ The Respondents do not state specifically when this transition occurred: "Upon information and belief, we believe this occurred in the early 2000's. However, we cannot give an exact date as to when the Senator's campaign began utilizing the event as a fundraiser." Supp. Letter at 5 n.2.

⁹ Supp. Letter at 5.

¹⁰ *See* Submission at 1. The committees stipulate that the 2010 event was the earliest still within the applicable five-year statute of limitations for violations under the Act, *see id.* at 2 n.2 (citing 28 U.S.C. § 2462).

¹¹ *See id.* at 2.

- 1 O'Gara in their disclosure reports filed with the Commission.¹² The table below provides a
2 summary of the unreimbursed event expenses paid for by O'Gara:¹³

Event	Expense	Amount
2010 H&B Event (Mike Crapo for U.S. Senate)	Kim Stocking Band	\$1,000.00
	Barbara's Party Rentals	\$1,710.14
	Tyler Petersen Horse Rentals	\$2,000.00 [*]
	Full Moon Catering	\$12,251.20 [*]
	<i>In-home exemption</i> ¹⁴	-\$1,000.00
	2010 TOTAL	\$15,961.34
2011 H&B Event (Freedom Fund)	Kim Stocking Band	\$1,000.00
	Barbara's Party Rentals	\$1,814.00
	Tyler Petersen Horse Rentals	\$2,200.00
	Full Moon Catering	\$13,664.60
	2011 TOTAL	\$18,678.60
2012 H&B Event (Freedom Fund)	Kim Stocking Band	\$300.00 ¹⁵
	Barbara's Party Rentals	\$1,904.55
	Tyler Petersen Horse Rentals	\$2,400.00
	Full Moon Catering	\$19,324.22

¹² *Id.*

¹³ *Id.* at 2-3.

^{*} According to Respondents, these figures are estimates based on event attendance and similar expenses in other years, as the original invoices or other documentation of payment could not be obtained.

¹⁴ The \$1,000 in-home fundraiser exemption for invitations, food, and beverages applies only to candidate fundraising events and therefore only applies to the 2010 event, which benefited Sen. Crapo's authorized committee. It does not apply to the 2011 and 2012 events, which benefited his leadership PAC. Accordingly, the Respondents reduced by \$1,000 the reimbursement amount of the \$12,251.20 catering expense paid by O'Gara in 2010. *See* 11 C.F.R. § 100.77.

¹⁵ The *sua sponte* submission indicated that in 2012, O'Gara paid \$1,000 to the band. However, according to Respondents' supplemental informational letter, invoices showed that the band cost \$1,500 in 2012 but that amount was included in the catering total. O'Gara paid the band a separate, additional fee of \$300, not the \$1,000 that was disclosed in the *sua sponte* submission. By that point, however, Freedom Fund had already reimbursed O'Gara \$24,628.77 for 2012, based on the \$1,000 estimate of the band payment, when it actually owed O'Gara only \$23,928.77 for that year's event, based on the actual payment of \$300 for the band. In other words, Freedom Fund paid O'Gara \$700 more than he spent on the 2012 event expenses. Respondents seek the Commission's guidance as to how to handle this excessive-reimbursement issue.

	2012 TOTAL	\$23,928.77
2010–2012 H&B Events	GRAND TOTAL	\$58,568.71

1 The *sua sponte* submission and the supplemental letter include documentation supporting
2 these figures, with the exception of two payments in 2010 — the catering cost and horse rental
3 — for which invoices or other proof of payment could not be obtained despite the Respondents'
4 efforts. For those figures, Respondents estimated the cost based on the event's attendance and
5 the cost for horse rentals and catering in other years.¹⁶

6 2. Discovery and Disclosure of the In-Kind Contributions

7 The Respondent committees claim that they discovered the unreimbursed event expense
8 payments in 2012 while conducting an internal review of their fundraising expenditures and
9 contributions.¹⁷ In December 2010, the committees learned about an unreported loan of the
10 Campaign's funds to a fraudulent real estate company — which eventually led to an unrelated
11 *sua sponte* submission — and, realizing that their oversight regime contained serious flaws, they
12 implemented additional recordkeeping and compliance policies.¹⁸ Susan Wheeler, who became
13 the Washington, DC, Chief of Staff for Senator Crapo in 2011, found that although the
14 committees were spending significant amounts on the Hook & Bullet event, they did not have

¹⁶ The Respondents' methodology for calculating these estimated figures can be found in the submission. See Submission at 3–4.

¹⁷ See *id.* at 2 n.1.

¹⁸ See *Sua Sponte Submission* at 2 (Apr. 29, 2013), Pre-MUR 556 / ADR 725 (Mike Crapo for U.S. Senate, *et al.*) (explaining that Jacob G. Ball, Crapo's former campaign manager, departed the campaign in December 2010 and informed the committee of the apparent fraud, prompting the committee to retain outside counsel to investigate). The oversight policies that the committees implemented after discovering the unreported loan include requiring express authorization by at least two senior campaign staff members before making any disbursement from committee accounts, having at least one committee staff member without disbursement authority review bank statements and monitor financial transactions, and reconciling bank statements with accounting files and campaign finance disclosure reports weekly or monthly. The committees note that these policies "highlighted inadequacies" in recordkeeping and reporting that prompted them to track down the missing O'Gara invoices. Supp. Letter at 2–3.

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1 documentation for certain expenses, including horse rentals, catering, music, and party rentals.¹⁹
2 Wheeler then began an inquiry, which included research by McDermott Will & Emery, the law
3 firm representing the Respondents in this matter, Barracks Row Strategies, the committees'
4 fundraising firm, and O'Gara's personal accountant.²⁰ The inquiry revealed that O'Gara had
5 paid certain event expenses and had not been reimbursed by the committees, resulting in
6 unreported in-kind contributions by O'Gara to the committees.²¹

7 The Respondents concede that they discovered the in-kind contributions at issue in 2012;
8 well before they made their first *sua sponte* submission, and did not report them to the
9 Commission during the pendency of that prior matter.²² They maintain, however, that the effort
10 to locate the O'Gara payment invoices took much longer than they anticipated, largely for
11 reasons outside of their control, e.g. vendors had gone out of business or were unresponsive, and
12 records were difficult to obtain so long after the fact.²³ Moreover, the committees claim their
13 attention was primarily focused on resolving the pressing fraudulent loan matter. Respondents
14 argue, in sum, that they "simply did not have enough facts during [the period of time when the
15 prior *sua sponte* matter was pending] to make an accurate reimbursement and disclosure."²⁴

16 3. Remedial Steps

17 After the committees concluded their inquiry, the Campaign reimbursed O'Gara for
18 expenses relating to the 2010 event, and Freedom Fund reimbursed him for expenses relating to

¹⁹ See Supp. Letter at 2.

²⁰ See Submission at 2-3; Supp. Letter at 2-3.

²¹ See Submission at 2-3.

²² See Supp. Letter at 2; Submission at 3.

²³ See Submission at 3.

²⁴ Supp. Letter at 2.

1 the 2011 and 2012 events.²⁵ Respondents point out that although the Hook & Bullet was a
2 hybrid communal gathering and fundraiser, never a “purely political fundraising” event, they
3 “refunded Mr. O’Gara 100% of the Hook & Bullet expenses that he paid . . . in an abundance of
4 caution.”²⁶

5 Furthermore, the committees sought to prevent future similar violations by implementing
6 new policies for fundraising events: the committees’ staff and outside fundraising personnel
7 now engage directly with vendors for the Hook & Bullet, rather than allowing O’Gara to pay for
8 expenses and later be reimbursed.²⁷ The Respondent committees also claim that they have
9 amended the appropriate disclosure reports to reflect O’Gara’s in-kind contributions, although as
10 of the date of this report, the Commission has not received these amendments.²⁸

²⁵ The Campaign paid O’Gara \$15,961.34 for the 2010 event expenses; Freedom Fund paid O’Gara \$18,678.60 for the 2011 event expenses and \$24,628.77 for the 2012 event expenses. Submission at 4. As noted above, however, in their supplemental letter the Respondents point out that O’Gara was actually over-reimbursed \$700 for the 2012 event, *see supra* note 15.

²⁶ Submission at 4. The O’Gara reimbursements appear as expenditures on each committee’s disclosure reports filed with the Commission. *See* Freedom Fund 2015 Year-End Report at 37 (Jan. 29, 2016); Mike Crapo for U.S. Senate 2015 Amended October Quarterly Report at 248 (Dec. 21, 2015).

²⁷ Respondents claim that although the event was supposed to be held at O’Gara’s Idaho ranch in August 2013, Freedom Fund cancelled the event due to widespread forest fires in Idaho. *See* Submission at 4 n.4. They also indicated in an e-mail from counsel that O’Gara did not spend any funds in connection with the cancelled 2013 Hook & Bullet event, and that Freedom Fund hosted, and paid for, a substitute fundraising event at the Greenbrier Resort in White Sulphur Springs, West Virginia; Freedom Fund reported expenditures of \$38,363.77 related to that event on its 2013 Year-End Report. *See* Freedom Fund 2013 Year-End Report at 69 (Jan. 31, 2014). Respondents note that the Hook & Bullet event was held again in 2014 and 2015, benefiting Freedom Fund both years, and that Freedom Fund paid for all event-related expenses directly and reported those expenditures to the Commission. They also claim that since 2010, no other fundraising event for either committee has raised compliance issues. *See* Submission at 4.

²⁸ Submission at 4. To date, these reports — *i.e.* the Campaign’s 2010 October Quarterly Report, and Freedom Fund’s 2011 Mid-Year Report and 2012 August Monthly Report — do not appear to have been amended. We have consulted with the Reports Analysis Division (“RAD”), and confirmed that the committees have not filed the appropriate amendments as claimed in their submission. To resolve this issue, RAD has indicated that each committee could disclose the missing activity on a single, detailed miscellaneous submission to the Commission (“FEC Form 99”) referencing the applicable years. The FEC Form 99 would have to provide the same disclosure information as required on the original, incomplete reports, and would need to reflect corresponding adjustments to the cash-on-hand in each committee’s current cycle report, with a cross reference to the FEC Form 99. RAD has indicated that it is willing to work with each committee to make the necessary amendments to their reports.

B. Legal Analysis

Under the Federal Election Campaign Act of 1971, as amended ("Act"), a contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."²⁹ "Anything of value" includes all in-kind contributions, such as "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services."³⁰ At the relevant times, the Act prohibited any person from making aggregate contributions to a candidate for federal office, or a candidate's authorized committee, in excess of \$2,400 per election, and prohibited any person from making aggregate contributions to any other political committee in excess of \$5,000 per calendar year.³¹ Similarly, the Act prohibits political committees from knowingly accepting excessive contributions.³² The Act requires that committees file periodic disclosure reports with the Commission disclosing all contributions, in-kind or otherwise, that they receive.³³ The Act also requires the treasurer of a political committee to keep records of all contributions received by or on behalf of the committee, along with information identifying any person who makes a contribution in excess of \$50 or aggregate annual contributions of more than \$200.³⁴

²⁹ 52 U.S.C. § 30101(8)(A)(i). The Act's definition of contribution also encompasses the "payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." *Id.* at § 30101(8)(A)(ii).

³⁰ 11 C.F.R. § 100.52(d)(1).

³¹ 52 U.S.C. § 30116(a)(1)(A), (C); *see* 11 C.F.R. § 110.1(b). The per-election limit for individual contributions to a candidate or authorized committee is indexed for inflation and revised biannually, *see* 11 C.F.R. § 110.1(b)(1)(i)-(iii); the 2010 limit was \$2,400. *See* Contribution Limits for 2009-2010, <http://www.fec.gov/info/contriblimits0910.pdf>. The limit for individual contributions to any other political committee in 2011 and 2012 was \$5,000 per calendar year. *See* Contribution Limits for 2011-2012, <http://www.fec.gov/info/contriblimits1112.pdf>.

³² 52 U.S.C. § 30116(f).

³³ 52 U.S.C. § 30104(a), (b); *see* 11 C.F.R. § 104.3(a).

³⁴ 52 U.S.C. § 30102(c); *see* 11 C.F.R. § 102.9(a).

1 The record here clearly indicates that O'Gara made in-kind contributions by paying for
2 event-related expenses, in excess of the relevant contribution limits, that benefited either the
3 Campaign or Freedom Fund, for which he was not reimbursed by the relevant committee.
4 Moreover, by failing to timely reimburse O'Gara, the committees knowingly accepted those
5 excessive in-kind contributions. When the committees failed to report the O'Gara expense
6 payments as in-kind contributions, and keep required records relating to those contributions, they
7 violated the Act's reporting and recordkeeping requirements. Within the five-year statute of
8 limitations, at least three fundraising events featured unreimbursed payments by O'Gara for
9 event-related expenses, but these payments may have begun as far back as the early 2000s.
10 O'Gara was not reimbursed for these payments until 2015, and as of the date of this report, the
11 committees' disclosure reports have not been amended to show the contributions from O'Gara.

12 Although the Respondents have been forthright and cooperative by bringing these issues
13 to light and attempting to resolve them expeditiously, they concede that they first discovered the
14 O'Gara in-kind contributions in 2012 and failed to bring the matter to the Commission's
15 attention for almost three years. Even if we credit Respondents' explanation that it took time to
16 gather the necessary information and documents to accurately calculate the unreimbursed
17 expense payments that O'Gara made, they offer no reasonable justification for waiting so long to
18 bring the matter to the Commission's attention. Their failure to raise the issue is particularly
19 troubling because they brought another matter to the Commission's attention in April 2013.
20 While that matter involved different issues, the issues in this matter could potentially have been
21 resolved in the earlier *sua sponte* process, thereby conserving Commission resources and
22 potentially altering the Commission's handling of that prior matter, which was referred to the
23 Alternative Dispute Resolution Office.

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1 Most crucially, had the committees promptly brought this matter to the Commission's
2 attention, the Commission could have sought to preserve earlier potential violations — arising
3 from the Hook & Bullet events held between 2007 and 2009 — by requesting that the
4 committees and O'Gara toll the applicable statute of limitations while continuing to seek further
5 information and documentation of unreimbursed payments. The respondents' failure to come
6 forward sooner allowed the five-year period during which the Commission could have sought a
7 civil monetary penalty regarding the pre-2010 violations to expire.

8 We therefore recommend that the Commission take further enforcement action by
9 opening a MUR and making a reason to believe finding against the Respondent committees and
10 O'Gara. Because we believe the record is substantially complete and the Respondents are
11 interested in expeditiously resolving this matter, we also recommend the Commission enter
12 immediately into pre-probable cause conciliation.

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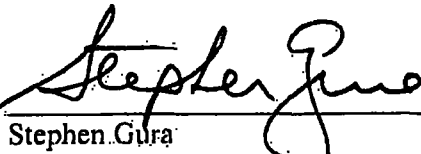
IV. RECOMMENDATIONS

1. Open a MUR;
- 2.
3. Find reason to believe that Freedom Fund and Lance Kolbet in his official capacity as treasurer violated 52 U.S.C. §§ 30102(c), 30104(b), 30116(f);
4. Find reason to believe that Thomas O'Gara violated 52 U.S.C. § 30116(a)(1)(A), (C);
5. Approve the attached Factual and Legal Analyses;
6. Enter into pre-probable cause conciliation with the Respondents;
7. Approve the attached proposed Conciliation Agreements; and
8. Approve the appropriate letters.

2.25.16

Date

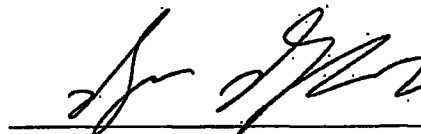
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